



AMERICAN BENEFITS COUNCIL

February 10, 2017

The Honorable Paul Ryan
Speaker
United States House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
H-204, The Capitol
Washington, DC 20515

Dear Speaker Ryan and Leader Pelosi:

As the House of Representatives reviews the Department of Labor's (DOL) Rules on Savings Arrangements Established by States for Non-Governmental Employees and Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees under the Congressional Review Act, the American Benefits Council (the "Council") would like to share significant concerns raised by our members about these rules.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing employee benefits. Collectively, the Council's members sponsor directly or provide services to retirement and health plans covering more than 100 million Americans.

To their own initiative, and in response to encouragement from the DOL, a number of states have promulgated state-run retirement programs for private sector employees. We appreciate that the states are striving to serve a goal - shared by the Council - to increase retirement plan coverage and savings. While well intentioned, the rules could hurt retirement savings and participants by discouraging plan sponsorship and limiting protections for workers.

The Council provided multiple sets of formal comments to the DOL and filed comments with the state of Oregon regarding its recent proposals to implement the Oregon-mandated IRA. The Council has also interacted with state officials, and has developed a set of principles by which to measure the impact of state proposals. The

following is a summary of key issues raised by Council members with respect to mandates imposed by states and political subdivisions (collectively referred to below as states).

UNDERMINING ERISA'S PROTECTIONS

Employees covered under private retirement plans enjoy broad legal protections under the Employee Retirement Security Act (ERISA), including fiduciary protection, DOL oversight, extensive regulation (e.g., regarding bonding), and broad legal recourse in the event of violations. The state plans requiring payroll deduction IRAs are not subject to ERISA, thereby depriving participants in such plans of those important protections. This creates a workplace in which some workers have protections and others do not.

ADDITIONAL BURDENS ON PLANS SPONSORS

There is nothing in the DOL rules to preclude states from applying mandates to employers that already maintain a retirement plan for their employees. In fact, the first state to implement a mandate, Oregon, has made it clear that many employers with a plan will be subject to the mandate to participate in the state plan (unless the employers alter their plan to satisfy the state rules). This will harm the system in multiple ways. For many large employers, this means extra unnecessary costs in complying with state mandates, despite the fact that they already maintain a qualified plan under federal rules. These extra costs drain assets from more beneficial uses, including enhancements to the employer's own plan.

LESS RETIREMENT SAVINGS

Faced with a requirement to participate in a state plan in all events, small and mid-sized employers may decide that the extra cost of maintaining their own plan is not worth it, depriving their employees of ERISA protections, higher contribution limits, and employer matching contributions. This would negatively affect retirement savings for employees of those companies, clearly contrary to both federal policy and the objectives of the states themselves.

GREAT POTENTIAL FOR STATES TO REGULATE RETIREMENT PLANS

The DOL rules do not preclude states from indirectly regulating private retirement plans. Specifically, under the DOL rules, a state may require employers to maintain plans with certain features to be exempt from the state mandate. That is exactly what Oregon has done, and, as noted, Oregon's requirements for exemption would not fit many plans that meet strict federal standards. This would create an unworkable patchwork of different rules, exactly the opposite of what Congress envisioned when it

enacted ERISA – i.e., a uniform set of federal rules that promote and facilitate the maintenance of retirement plans.

GREAT POTENTIAL FOR CONFLICTING MANDATES ON MULTI-STATE EMPLOYERS

There is nothing in the DOL rules to address the problems that multi-state employers may face in dealing with numerous and inconsistent state mandates. This problem has two aspects. First, a large employer might have to create administrative systems to deal with dozens of state or political subdivision programs. This is an untenable burden. Second, it is very likely that multi-state employers will face conflicting state rules regarding the same employees. Oregon’s mandate, for example, can apply to employees living or working in other states, raising the potential for the “other state” to impose its own mandate on the same employees.

DEPRIVING THE SYSTEM OF INNOVATION

The private retirement system has evolved and grown because of private sector innovation. Automatic enrollment, for example, was developed by the private sector and only later promoted through statutory and regulatory clarifications and safe harbors. Similarly, target date funds that have helped improve appropriate investment diversification were a result of private sector innovation. The creativity makes possible the continued growth and strength of the private employer-sponsored system. The DOL rules lead in the opposite direction, forcing employers to gauge their benefits programs by what is needed to satisfy the state mandates.

We believe in the private retirement system. We are concerned that the DOL rules will unintentionally undermine that system and adversely affect retirement security. We thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink that reads "Lynn D. Dudley". The signature is written in a cursive, flowing style.

Lynn D. Dudley
Senior Vice President,
Global Retirement and Compensation Policy